Filed 7/28/20 In re A.E. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.E., a Person Coming Under the Juvenile Law. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. N.L., Defendant and Appellant.	B303891 (L.A. County Super. Ct. No. 18CCJP04429A)

APPEAL from an order of the Superior Court of Los Angeles County, Debra L. Losnick, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Brian Mahler, Deputy County Counsel, for Defendant and Appellant.

N.L. (Mother) appeals from a juvenile court order terminating her parental rights over her daughter A.E. We consider whether the juvenile court should have applied the parent-child relationship exception to forego terminating Mother's parental rights. We also decide whether Mother can attack an earlier order stopping her reunification services because the juvenile court sent notice of her right to challenge that order to the address where she was then living, rather than to the address she provided on a contact information form.

I. BACKGROUND

A. The Initial Dependency Proceedings

In July 2018, the Los Angeles County Department of Children and Family Services (Department) filed a dependency petition on behalf of A.E., who was 20 months old at the time. The petition alleged A.E. was at substantial risk of serious physical harm due to Mother's past substance abuse and current abuse of methamphetamine and prescription medications. In addition, the petition alleged Mother put A.E. at risk by leaving her in the care of the maternal grandmother who was also a methamphetamine user.

At the initial detention hearing, juvenile court ordered A.E. detained, directed the Department to provide Mother with program referrals (including referrals for weekly drug testing and a substance abuse program), and granted Mother monitored visitation. In connection with that hearing, Mother completed a Notification of Mailing Address standardized form (a JV-140 form) and provided a mailing address on Durfee Avenue in Pico Rivera (the Durfee address). The court advised Mother at the

detention hearing that the address on the JV-140 form would be used to provide her with notice of future juvenile court hearings.

The juvenile court later sustained the dependency petition, assumed jurisdiction over A.E., and ordered family reunification services for Mother. Mother's case plan consisted of a full drug and alcohol program with aftercare, weekly random or on-demand testing, a parenting program, and individual counseling. Notice for the jurisdiction hearing was sent to Mother at an address on Rosemead Boulevard in Pico Rivera (the Rosemead address) where she was then living,[1] not the Durfee address. Mother and her attorney were present at the jurisdiction hearing and the juvenile court found notice of the hearing had been "given as required by law."

B. The Six-Month Review Hearing

In a post-jurisdiction status review report, the Department recommended the juvenile court order Mother to receive no further family reunification services after the six-month review hearing. Although Mother had been consistent in her visits with A.E. and appeared to have a strong bond with her daughter, Mother had not participated in any of the programs the court earlier ordered as part of her case plan—despite receiving referrals to program providers and follow-up calls from the

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[1] According to the Department's jurisdiction report, the social worker met with Mother at the Rosemead address to interview her for the report. Throughout the proceedings below, notices were sent to Mother at the Rosemead and Durfee addresses, with the Durfee address used more regularly in the latter stages of the dependency proceedings.

Department. In addition, Mother had appeared for only one drug test since the inception of the case.

The juvenile court held the six-month review hearing in March 2019. Mother was represented by counsel at the hearing but she did not personally appear (there was no objection that notice had been deficient). Mother's attorney argued her family reunification services should continue, despite her lack of progress, because she had been consistent in her visitation with A.E. and had attempted to enroll in court-ordered programs.

The juvenile court found the Department had provided Mother with reasonable services and Mother had "failed to participate regularly and make substantive progress in the case plan." Although Mother had been consistent in her visitation with A.E., the court determined she had "taken no meaningful steps toward enrolling in any of the services ordered by the court" and "certainly [had] made no progress at all in the case plan." Characterizing Mother's participation in her case plan as "nonexistent," the court stopped family reunification services for Mother and scheduled a Welfare and Institutions Code section 366.26[2] hearing to decide A.E.'s permanent plan.

Because Mother was not present at the status review hearing, the juvenile court directed the court clerk to send notice of Mother's rights to seek review of the no further reunification services order to her at her "last known address." The court clerk mailed a "Notice of Entry" of the minute order memorializing the status review hearing and "Notice of Intent to File Writ, Petition

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[2] Undesignated statutory references that follow are to the Welfare and Institutions Code.

for Extraordinary Writ forms" to Mother at the Rosemead address, not the Durfee address.

C. The Section 366.26 Hearing

Although the section 366.26 hearing was originally scheduled for July 2019, it was held in January 2020 after several continuances. In the 10-month interval between the stoppage of reunification services and the section 366.26 hearing, the Department prepared status review reports to update the juvenile court on A.E.'s relationships with Mother and with her paternal grandparents, who had become the prospective adoptive parents.

The Department's reporting advised Mother had been consistently participating in monitored visits with A.E., including video chat visits once A.E. was placed with the paternal grandparents who lived in Arizona.[3] Mother's interaction with A.E. was not entirely beneficial, however. A.E.'s speech therapist recommended Mother stop attending speech therapy sessions because her presence was disruptive: When Mother was present, A.E. would "completely change her demeanor," cry, withdraw from her peers, and refuse to speak. The Department also reported Mother still had not addressed the substance abuse issues that led to the finding of dependency jurisdiction.[4] In the

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[3] According to the Department, A.E. was "attentive" on the video chat calls when her half-sibling was participating but she would often lose interest and walk away to go play when her half-sibling was no not on the call.

[4] In July 2019, Mother claimed she was enrolled in an outpatient program, but the Department was unable to verify her

Department's view, Mother "continue[d] to have the same lifestyle."

As for the prospective adoptive parents, the Department reported that three months after A.E. was placed in their home she was doing well emotionally and physically and appeared to be thriving. The paternal grandparents had demonstrated they were capable of meeting A.E.'s needs and A.E. had "developed secure attachments" to them.

Mother attended the section 366.26 hearing but did not testify or rely on documentary evidence other than the pertinent Department reports, which the court admitted into evidence. Mother's attorney argued the court should not terminate her parental rights because the parent-child relationship exception applied in light of Mother's "consistent and frequent visitation" with A.E. The child's attorney argued the parent-child exception was inapplicable because of the quality of Mother's visits, i.e., because Mother had not progressed past monitored visitation. Counsel for the Department also argued Mother's parental rights should be terminated, adding Mother had not met her burden to establish severing Mother's parental rights would be detrimental to A.E.

The juvenile court terminated Mother's parental rights. As to the parent-child relationship exception, the court found any benefit accruing to A.E. from her relationship with Mother was outweighed by the physical and emotional benefit she would receive through the permanency and stability of adoption.

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enrollment because Mother did not execute a release allowing the Department to obtain records from the program provider.

II. DISCUSSION

Mother maintains she can challenge the earlier juvenile court order stopping reunification services in this appeal from the parental rights termination order because the court clerk sent the reunification services writ rights advisement to the Rosemead address, not the Durfee address (the address listed on the JV-140 form). The use of the Rosemead address, however, does not excuse Mother's failure to bring a timely challenge to the reunification services order: it was an address where Mother was likely to receive actual notice and there is no evidence or claim that Mother did not receive notice.

Mother's claim that the juvenile court should have applied the parent-child relationship exception to termination of parental rights is properly before us but unpersuasive. To successfully invoke the exception, Mother needed to show she occupied a truly parental role in A.E.'s life such that termination of parental rights would greatly harm A.E. by depriving her of a substantial, positive emotional attachment. The evidence in the record provides a sound basis for the juvenile court's determination that Mother did not make this required showing.

A. Mother's Challenge to the Termination of Reunification Services Is Not Cognizable in This Appeal

A parent may not appeal from a court order setting a section 366.26 hearing (including determinations underlying that order, which usually include an order ceasing reunification services) unless the parent first seeks extraordinary writ review. (§ 366.26, subd. (*l*)(1); see also Cal. Rules of Court, rule 5.590 ["If a party is not present when the court orders a hearing under

section 366.26 . . . , the advisement [of the need to seek extraordinary writ relief to challenge the setting of the hearing] must be made by the clerk of the court by first-class mail to the last known address of the party"].) A parent's failure to comply with the requirement to seek review by writ will be excused, however, if the parent shows the juvenile court did not adequately inform the parent of his or her right to file a writ petition. (*In re A.A.* (2016) 243 Cal.App.4th 1220, 1240 (*A.A.*).)

Mother was represented by counsel at the hearing when the court scheduled a section 366.26 permanency planning hearing, even though she did not attend personally. The juvenile court clerk sent the required writ rights advisement to Mother at the Rosemead address, not the Durfee address she earlier listed on the JV-140 form, but that solitary fact does not establish the notice was defective. Although in many cases it will be true that failure to send notice of writ review rights to the address on a JV-140 form will compel a conclusion that the notice was defective, this is not one of those cases.

The pertinent statute and rule of court state only that the notice must be sent to a parent's "last known address," not the address provided on a particular form. Earlier in the dependency proceedings, the Department sent Mother notice of the jurisdiction hearing to the Rosemead address (even though Mother had by then listed her address as the Durfee address on the JV-140 form). Mother and her attorney were present at the jurisdiction hearing without any objection to the notice provided. The juvenile court also made a finding that notice for that hearing had been "given as required by law." Based on the evidence in the record indicating Mother was then living at the Rosemead address, we cannot say the decision by the

Department, and later the juvenile court, to send the writ review advisement to that address was error.[5] (*A.A.*, *supra*, 243 Cal.App.4th at 1240 [parents adequately advised of their right to

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[5] Section 316.1, a statute that governs notice generally, and the Court of Appeal's decision in *In re J.R.* (2019) 42 Cal.App.5th 513, are not to the contrary.

Section 316.1 requires a parent in dependency proceedings to provide a permanent mailing address to the court and requires juvenile courts to advise the parent that the designated mailing address will be used by the court for notice purposes unless and until the parent notifies the court or the applicable social services agency of a new mailing address in writing. (§ 316.1, subd. (a).) The record does not reveal, one way or the other, whether Mother ever provided written notice of an address change to the Department. But rule 5.590 of the California Rules of Court, backed by section 366.26, subdivision (*l*)(3), is the specific provision that governs how parents must be advised of their writ review rights and that rule requires such an advisement to be sent to the "last known address" not a "permanent mailing address." In many instances, the two will be the same, but on the facts here, the juvenile court had good reason to believe sending the writ rights advisement to the Rosemead address was likely to result in actual notice to Mother.

In re J.R. is a case in the opposite posture of this one, where the Court of Appeal affirmed a juvenile court decision to send a writ rights advisement to a parent at the address on a JV-140 form rather than another address for the parent that appeared in some reports of the social service agency. (*In re J.R.*, *supra*, 42 Cal.App.5th at 526-528.) The case is therefore of limited utility here, except perhaps as a reminder that there are no entirely inflexible rules when it comes to advising a parent of his or her writ rights, so long as the advisement is sent to an address where the parent is likely to receive it.

seek writ review if the juvenile court sent notice "to an address where [the parent] would likely receive it"]; see also *In re Hannah D.* (2017) 9 Cal.App.5th 662, 681 ["the ultimate purpose of the rule (i.e., actual notice) was accomplished"].)

In addition, at the later section 366.26 hearing where Mother *was* personally present (along with her attorney), there was no complaint about the writ rights advisement having been sent to the Rosemead address nor any objection to notice in any respect; indeed, even in this appeal Mother never claims she did not receive the writ rights advisement the juvenile court sent. Under these circumstances, we cannot excuse Mother's lack of compliance with the writ requirement. We therefore conclude her rather perfunctory attack on the merits of the juvenile court's decision to stop reunification services is nonjusticiable.

B. Termination of Parental Rights Was Not Error

"The section 366.26 hearing is a critical late stage in a dependency proceeding. The child has been under juvenile court jurisdiction for an extended period following the dispositional order, and the court has held one or more review hearings to consider a return to parental custody. (See § 366.21.) At the section 366.26 hearing, the focus shifts away from family reunification and toward the selection and implementation of a permanent plan for the child. . . . If adoption is likely, the court is required to terminate parental rights, unless specified circumstances compel a finding that termination would be detrimental to the child. (§ 366.26(c)(1); *In re Celine R.* (2003) 31 Cal.4th 45, 53[ ].)" (*In re S.B.* (2009) 46 Cal.4th 529, 532, fn. omitted.)

Mother invoked one of these statutory circumstances in the juvenile court: the parent-child relationship exception, codified at section 366.26, subdivision (c)(1)(B)(i). In relevant part, that statute provides: "[T]he court shall terminate parental rights unless . . . [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c).) Mother had the burden to prove the exception applied. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395 (*Anthony B.*); *In re K.P.* (2012) 203 Cal.App.4th 614, 621 (*K.P.*).)

To meet her burden, Mother was required to do more than show A.E. would receive some benefit from continuing a relationship maintained during periods of visitation. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466 ["To overcome the preference for adoption and avoid termination of the natural parent's rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed"] (*Angel B.*).) Even if parent-child contact has been loving and frequent, and notwithstanding the existence of an emotional bond with the child, Mother must show she occupies "a parental role" in A.E.'s life. (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300 (*Noah G.*); accord, *K.P.*, *supra*, 203 Cal.App.4th at 621.) For this reason, a parent-child relationship that satisfies the section 366.26, subdivision (c)(1)(B)(i) exception characteristically (though not necessarily) arises from day-to-day contact between the parent and child, and it is difficult for a

parent who has not progressed beyond monitored visitation to show the exception is applicable. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

In reviewing a juvenile court decision on the applicability of the parent-child exception, "[w]e apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child." (*Anthony B.*, *supra*, 239 Cal.App.4th at 395; *K.P.*, *supra*, 203 Cal.App.4th at 621-622.) We consider, among other possibly relevant factors, the age of the child, the portion of the child's life spent in the parent's custody, the positive or negative effect of interaction between the parent and child, and the child's particular needs. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937-938; *Angel B.*, *supra*, 97 Cal.App.4th at 467.)

There is substantial evidence that the statutorily described parent-child relationship did not exist between Mother and A.E. The only evidence on Mother's role and relationship with A.E. came from the Department's reports. Although those reports documented Mother's love and affection for A.E., they did not establish she occupied a parental role in A.E.'s life. Indeed, they demonstrated the opposite in light of Mother's failure to take any meaningful steps to address the substance abuse that gave rise to the dependency proceedings, her failure to progress beyond monitored visitation, and her limited involvement with A.E. while being cared for by the paternal grandparents in Arizona. (See, e.g., *Noah G.*, *supra*, 247 Cal.App.4th at 1302 [in considering the parent-child exception "the juvenile court could properly focus on the mother's unresolved substance addiction

issues because the children became dependents of the court due to her drug abuse"]; *In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1109 [relying on the parent's failure to progress beyond monitored visitation].)

In addition, the juvenile court's determination that termination of parental rights would not be detrimental to A.E. was not an abuse of discretion. A.E. was still very young at the time of the rights termination hearing (just over three years old) and, at the same time, she had been out of Mother's custody for roughly half her young life (18 months). In addition, the parental grandparents provided A.E. a home in which she thrived. Thus, while there are good indications A.E. had a bond with Mother as a result of their regular monitored visitation, the juvenile court reasonably determined it was not the sort of parental bond that should forestall termination of parental rights in favor of an adoptive home. (*K.P.*, *supra*, 203 Cal.App.4th at 622-623 ["While the weekly two-hour visits between K.P. and his mother may have been pleasant for both parties, there was no evidence in the record (beyond [mother's] stated belief) that termination of the parent-child relationship would be detrimental to K.P. or that the relationship conferred benefits to K.P. more significant than the permanency and stability offered by adoption"]; *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 644 ["The parents demonstrated that they have a warm and affectionate relationship with their son. Because they continue to abuse alcohol[,] . . . however, they have not demonstrated an ability to provide Marcelo, over the long term, with a stable, safe and loving home environment"].)

DISPOSITION

The juvenile court's order terminating Mother's parental rights is affirmed.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.